

quinn emanuel

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Bruce E. Van Dalsem (Bar No. 124128)

brucevandalsem@quinnemanuel.com

Daniel C. Posner (Bar No. 232009)

danposner@quinnemanuel.com

Ryan Q. Keech (Bar No. 280306)

ryankeech@quinnemanuel.com

865 South Figueroa Street, 10th Floor

Los Angeles, California 90017-2543

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Robert L. Raskopf (*pro hac vice pending*)

robertraskopf@quinnemanuel.com

51 Madison Avenue, 22nd Floor

New York, New York 10010-1601

Telephone: (212) 849-7000

Facsimile: (212) 849-7100

Attorneys for TINDER, INC. and

IAC/INTERACTIVECORP

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

WILDFIREWEB, INC., a Delaware
corporation,

Plaintiff,

vs.

TINDER, INC., a Delaware
corporation;
IAC/INTERACTIVECORP, a
Delaware corporation; and DOES 1-5,

Defendants.

CASE NO. 2:15-CV-945-MMM
(AGRx)

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF WILDFIREWEB,
INC.'S COMPLAINT AND
DEMAND FOR JURY TRIAL**

Assigned to: Hon. Margaret M. Morrow

Filing Date: Feb. 10, 2015

Trial Date: None Set

1 Defendants Tinder, Inc. (“Tinder”) and IAC/InterActiveCorp (“IAC”)
 2 (collectively, “Defendants”), through their counsel, answer the Complaint of
 3 plaintiff WildFireWeb, Inc. (“Plaintiff”), as follows. Unless specifically admitted
 4 herein, Defendants deny each of the allegations of Plaintiff’s Complaint.

5 1. Defendants lack knowledge or information sufficient to form a belief as
 6 to the truth or falsity of the allegations in Paragraph 1 of the Complaint, and
 7 therefore deny same.

8 2. Defendants lack knowledge or information sufficient to form a belief as
 9 to the truth or falsity of the allegations in Paragraph 2 of the Complaint, and
 10 therefore deny same.

11 3. Defendants admit that they began using the name “Tinder” in
 12 connection with an app by no later than August 2012, and that the “Tinder” design is
 13 as follows:



14
 15
 16 Defendants deny the remaining allegations in Paragraph 3 of the Complaint, and
 17 further deny the implication that Tinder’s mark appears the same as or is
 18 confusingly similar to Plaintiff’s alleged mark in the marketplace.

19 4. Defendants lack knowledge or information sufficient to form a belief as
 20 to the truth or falsity of the allegations in Paragraph 4 of the Complaint, and
 21 therefore deny same, and further deny that Defendants have infringed Plaintiff’s
 22 alleged mark.

23 5. Defendants deny the allegations in Paragraph 5 of the Complaint, and
 24 further deny that they have engaged in any wrongful or unlawful conduct with
 25 respect to Plaintiff’s alleged trademark rights.

26 6. Defendants admit that Plaintiff is attempting to assert a claim under the
 27 Lanham Act, 15 U.S.C. § 1121, et seq., and that the Court has subject-matter
 28 jurisdiction over this action.

quinn emanuel

1 7. Defendants admit that Tinder's principal place of business is located in,
2 and that venue is proper in, this judicial district.

3 8. Defendants lack knowledge or information sufficient to form a belief as
4 to the truth or falsity of the allegations in Paragraph 8 of the Complaint, and
5 therefore deny same.

6 9. Defendants admit that Tinder is a Delaware corporation with its
7 principal place of business in West Hollywood, California, and that Tinder transacts
8 business in this judicial district.

9 10. Defendants admit that IAC is a Delaware corporation with its principal
10 place of business in New York, New York, and that it is the majority owner of
11 Tinder.

12 11. Defendants lack knowledge or information sufficient to form a belief as
13 to the truth or falsity of the allegations in Paragraph 11 of the Complaint, and
14 therefore deny same.

15 12. Defendants lack knowledge or information sufficient to form a belief as
16 to the truth or falsity of the allegations in Paragraph 12 of the Complaint, and
17 therefore deny same.

18 13. Defendants lack knowledge or information sufficient to form a belief as
19 to the truth or falsity of the allegations in Paragraph 13 of the Complaint, and
20 therefore deny same.

21 14. Defendants lack knowledge or information sufficient to form a belief as
22 to the truth or falsity of the allegations in Paragraph 14 of the Complaint, and
23 therefore deny same.

24 15. Defendants lack knowledge or information sufficient to form a belief as
25 to the truth or falsity of the allegations in Paragraph 15 of the Complaint, and
26 therefore deny same.

27
28

quinn emanuel

1 16. Defendants admit that on-line records of the U.S. Patent and Trademark
2 Office indicate that a registration for a “Tinder” mark was issued to Plaintiff on July
3 19, 2011, as Registration Number 3,998,405.

4 17. Defendants admit that the allegations in Paragraph 17 of the Complaint
5 contain a generally accurate description of the functionality of the Tinder app.

6 18. Defendants lack knowledge or information sufficient to form a belief as
7 to the truth or falsity of the allegation in Paragraph 18 of the Complaint relating to
8 Plaintiff’s alleged use of the name “Tinder” or a design. Defendants deny the
9 remaining allegations in Paragraph 18 of the Complaint, and further deny the
10 implication that Tinder’s mark appears the same as or is confusingly similar to
11 Plaintiff’s alleged mark in the marketplace.

12 19. Defendants admit the allegations in Paragraph 19 of the Complaint.

13 20. Defendants admit that in July 2014, a female former Tinder employee
14 filed a lawsuit against Tinder alleging sexual harassment and discrimination, and
15 that this lawsuit was resolved in 2014 without any finding of liability. Defendants
16 deny the remaining allegations in Paragraph 20 of the Complaint.

17 21. Defendants lack knowledge or information sufficient to form a belief as
18 to the truth or falsity of the allegations in Paragraph 21 of the Complaint, and
19 therefore deny same. Defendants further deny the implication that Tinder’s mark
20 appears the same as or is confusingly similar to Plaintiff’s alleged mark in the
21 marketplace.

22 22. Defendants lack knowledge or information sufficient to form a belief as
23 to the truth or falsity of the allegations in Paragraph 22 of the Complaint, and
24 therefore deny same. Defendants further deny the implication that Tinder’s mark
25 appears the same as or is confusingly similar to Plaintiff’s alleged mark in the
26 marketplace.

27 23. Defendants lack knowledge or information sufficient to form a belief as
28 to the truth or falsity of the allegations in Paragraph 23 of the Complaint, and

1 therefore deny same. Defendants further deny the implication that Tinder's mark
 2 appears the same as or is confusingly similar to Plaintiff's alleged mark in the
 3 marketplace.

4 **CLAIMS FOR RELIEF**

5 **First Claim for Relief**

6 **(Against all Defendants; Trademark Infringement, 15 U.S.C. § 1114(1))**

7 24. Defendants incorporate by reference their responses in each and every
 8 paragraph of this Answer with the same force and effect as if fully set forth herein.

9 25. Defendants admit that on-line records of the U.S. Patent and Trademark
 10 Office indicate that a registration for a "Tinder" mark was issued to Plaintiff on July
 11 19, 2011, as Registration Number 3,998,405. Except as so admitted, Defendants
 12 lack knowledge or information sufficient to form a belief as to the truth or falsity of
 13 the allegations in Paragraph 25 of the Complaint, and therefore deny same.

14 26. Defendants lack knowledge or information sufficient to form a belief as
 15 to the truth or falsity of the allegations in Paragraph 26 of the Complaint, and
 16 therefore deny same.

17 27. Defendants admit that Plaintiff has not authorized Defendants to use
 18 Plaintiff's alleged mark, but deny any such use or that any such authorization is
 19 necessary. Defendants further deny the implication that Tinder's mark appears the
 20 same as or is confusingly similar to Plaintiff's alleged mark in the marketplace.

21 28. Defendants deny the allegations in Paragraph 28 of the Complaint.

22 29. Defendants deny the allegations in Paragraph 29 of the Complaint.

23 30. Defendants deny the allegations in Paragraph 30 of the Complaint.

24 31. Defendants deny the allegations in Paragraph 31 of the Complaint.

25 32. Defendants deny the allegations in Paragraph 32 of the Complaint.

26 33. Defendants deny the allegations in Paragraph 33 of the Complaint.

27 **Second Claim for Relief**

28 **(Against all Defendants; False Designation of Origin, 15 U.S.C. § 1125(a))**

quinn emanuel

quinn emanuel

34. Defendants incorporate by reference their responses in each and every paragraph of this Answer with the same force and effect as if fully set forth herein.

35. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 35 of the Complaint, and therefore deny same.

36. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 36 of the Complaint, and therefore deny same.

37. Defendants admit that Plaintiff has not authorized Defendants to use Plaintiff's alleged design mark, but deny any such use or that any such authorization is necessary. Defendants further deny the implication that Tinder's mark appears the same as or is confusingly similar to Plaintiff's alleged mark in the marketplace.

38. Defendants admit that they have used a design as depicted in Paragraph 38 of the Complaint, but deny that it is confusingly similar to Plaintiff's alleged design mark in the marketplace.

39. Defendants deny the allegations in Paragraph 39 of the Complaint.

40. Defendants deny the allegations in Paragraph 40 of the Complaint.

41. Defendants deny the allegations in Paragraph 41 of the Complaint.

42. Defendants deny the allegations in Paragraph 42 of the Complaint.

43. Defendants deny the allegations in Paragraph 43 of the Complaint.

44. Defendants deny the allegations in Paragraph 44 of the Complaint.

PRAYER FOR RELIEF

Defendants deny that Plaintiff is entitled to any relief from Defendants.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses as to each claim alleged in the Complaint, without assuming the burden of proof on such defenses that would

otherwise fall on Plaintiff. Defendants reserve the right to supplement and/or amend these defenses, including to assert new defenses, as discovery is conducted.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

45. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Lack of Ownership of Valid Trademark Rights)

46. Plaintiff's claims fail because Plaintiff does not own valid rights in the alleged trademarks.

THIRD AFFIRMATIVE DEFENSE
(Non-Infringement)

47. Defendants have not infringed any applicable trademarks under federal or state law.

FOURTH AFFIRMATIVE DEFENSE
(Good Faith Reliance on Counsel)

48. The claims made in the Complaint are barred, in whole or in part, by Defendants' good faith reliance on the advice of counsel.

FIFTH AFFIRMATIVE DEFENSE
(No Willful Conduct)

49. Plaintiff's claims for enhanced damages and an award of attorneys' fees and costs against Defendants have no basis in fact or law and should be denied.

SIXTH AFFIRMATIVE DEFENSE
(No Damage)

50. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner or at all by reason of any act alleged against Defendants in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

SEVENTH AFFIRMATIVE DEFENSE
(Lack of Irreparable Harm)

51. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show that it will suffer any irreparable harm from Defendants' alleged actions.

EIGHTH AFFIRMATIVE DEFENSE
(Adequacy of Remedy at Law)

52. The alleged injury suffered by Plaintiff, if any, would be adequately compensated by monetary relief. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

NINTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

53. The claims made in the Complaint are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

TENTH AFFIRMATIVE DEFENSE
(Waiver, Acquiescence, Estoppel)

54. Each of the purported claims set forth in this Complaint is barred by the doctrines of waiver, acquiescence, and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE
(Laches)

55. Plaintiff's claims are barred in whole or in part by laches, in that Plaintiff has unreasonably delayed to enforce its rights, if any, despite its full awareness of Tinder's alleged actions.

TWELFTH AFFIRMATIVE DEFENSE
(Unclean Hands)

56. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE
(Third Party Use)

57. The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of any marks at issue.

FOURTEENTH AFFIRMATIVE DEFENSE
(Good Faith Adoption and Use of Mark)

58. The claims made in the Complaint are barred, in whole or in part, by Defendants' good faith adoption of and use of the Tinder mark.

ADDITIONAL DEFENSES

59. Defendants reserve the right to assert additional defenses.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by way of its Complaint;
2. That the Complaint, and each of its claims for relief, be dismissed with prejudice;
3. That Defendants be awarded their costs of suit incurred herein, including attorneys' fees and expenses; and
4. For such other and further relief as the Court deems just and proper.

DATED: March 5, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Daniel C. Posner

Daniel C. Posner
Attorneys for Tinder, Inc. and
IAC/InterActiveCorp

DEMAND FOR JURY TRIAL

Defendants demand a jury trial pursuant to Rule 38(a) of the Federal Rules of Civil Procedure on all matters triable by a jury.

DATED: March 5, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Daniel C. Posner

Daniel C. Posner
Attorneys for Tinder, Inc. and
IAC/InterActiveCorp

quinn emanuel